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TRANSCENDENCE TRANSIT II, INC.,	:	
TRANSCENDENCE TRANSIT, INC.,	:	
PATRIARCH PARTNERS, LLC, and	:	
PATRIARCH PARTNERS AGENCY	:	Case 29-CA-182049
SERVICES; Single or Joint Employers,	:	
	:	
and	:	
	:	
LOCAL 1181-1061, AMALGAMATED	:	
TRANSIT UNION, AFL-CIO.	:	
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Pursuant to Section 102.46 of the National Labor Relations Board’s Rules and Regulations, Charging Party Local 1181-1061, Amalgamated Transit Union, AFL-CIO (“Local 1181”), hereby submits the following Exceptions to the Decision of Administrative Law Judge Kenneth W. Chu (“the ALJ”):

Exception 1: The ALJ erred by concluding that Transcendence II is not a successor to TransCare NY. ALJD at pp. 13-17; ALJD at 25:36-37.

Exception 2: The ALJ erred by concluding that Respondents are not a single employer and that no Respondent was a single employer with Transcendence II. ALJD at pp. 22-25; ALJD at 25:41.

Exception 3: The ALJ erred by concluding that Respondents are not joint employers and that no Respondent was a joint employer with Transcendence II. ALJD at pp. 17-22; ALJD at 25:39.

Exception 4: The ALJ erred by concluding that Respondents did not fail and refuse to bargain collectively and in good faith with the Union in violation of Section 8(a)(5) and (1) of the Act. ALJD at 25:43-45.

Exception 5: The ALJ erred by finding that Respondent PPAS acted on behalf of Wells Fargo and, in the “Bill of Sale, Agreement to Pay and Transfer Statement” (“Bill of Sale”) (GC Ex. 12), PPAS, as the administrative agent of Wells Fargo, would sell some TransCare assets to Transcendence and Transcendence II. ALJD at 5:6-7, 36-37.

Exception 6: The ALJ erred by finding that the consideration for the transfer or sale of TransCare assets was funded at \$10 million through Ark Angels (owned and managed by Tilton). ALJD at 6:1-3.

Exception 7: The ALJ erred by finding that Youngblood said that Tilton offered him the position of president in one of the two Transcendence entities. ALJD at 6:14-15.

Exception 8: The ALJ erred by concluding that TransCare NY assets, including the MTA Contract, were not assigned or transferred to Transcendence II. ALJD at 6:30-35.

Exception 9: The ALJ erred by concluding that the foreclosure sale of TransCare NY assets never went through. ALJD at 6:30-35; ALJD at 12:17-18.

Exception 10: The ALJ erred by finding that, instead of TransCare assets being assigned, transferred, or the subject of a foreclosure sale, TransCare filed for bankruptcy on February 24. ALJD at 6:30-35.

Exception 11: The ALJ erred by finding that Shunda Watson was a union board official. ALJD at 6:43.

Exception 12: The ALJ erred by finding that the announcement that the employees' jobs were being transferred to a new company was only a draft. ALJD at 16:17-24.

Exception 13: The ALJ erred by finding that any leakage of the announcement to the drivers was in anticipation of transfers that never occurred. ALJD at 16:22-23.

Exception 14: The ALJ erred by finding that the NewCo Announcement would not have gone out to employees in the format that it did. ALJD at 16:23-24.

Exception 15: The ALJ erred by finding that Randy Jones sent the NewCo Announcement in emails to Youngblood and Fuchs as a draft communication to the TransCare NY employees. ALJD at 8:8-19; ALJD at 16:17-24.

Exception 16: The ALJ erred by finding that Jones was not aware that Youngblood sent the email because it was still in draft. ALJD at 8:8-19.

Exception 17: The ALJ erred by finding that the notice dated February 23 should not have been distributed because Jones' email was not sent to Youngblood until February 24 and stated that it was a draft. ALJD at 8:8-19.

Exception 18: The ALJ erred by concluding that the employees were not offered employment at Transcendence or Transcendence Transit II. ALJD at 16:27-28, 35-38.

Exception 19: The ALJ erred by finding that none of the employees should have been under the impression that they were working for Transcendence II on February 24, 25, and 26. ALJD at 16:33-35.

Exception 20: The ALJ erred by finding that Tom Charles was a vice president of TransCare NY. ALJD at 10:33.

Exception 21: The ALJ erred by finding that Anthony Cordiello received a call from Tom Fuchs on February 24 during which Fuchs told Cordiello that some employees would be transferred to the new company. ALJD at 10:36-37.

Exception 22: The ALJ erred by finding that Fuchs told Cordiello on February 24 that the job offers had not yet transferred to Transcendence II. ALJD at 17:2-3.

Exception 23: The ALJ erred by finding that Cordiello was informed that TransCare was closing. ALJD at 10:44-45; ALJD at 17:3-4.

Exception 24: The ALJ erred by finding that Creswell did not speak on behalf of the Respondents but rather Creswell represented the interest of the secured creditor(s). ALJD at 11:14; ALJD at 15:22-24.

Exception 25: The ALJ erred by finding that Salvatore LaMonica believed on February 25 that Creswell was representing PPAS as the secured creditor. ALJD at 11:14-15.

Exception 26: The ALJ erred by finding that LaMonica did not give his consent to the termination of the MTA Contract to Creswell until 5:07 p.m. on February 26. ALJD at 16:3.

Exception 27: The ALJ erred by finding that LaMonica called the MTA Attorney and instructed that the buses be returned to the Foster Avenue facility and that the MTA should secure the vehicles. ALJD at 12:13-15.

Exception 28: The ALJ erred by finding that Stephen testified that he wanted to assure the MTA that the lenders would not have a right to foreclose on the contract. ALJD at 12:42-43.

Exception 29: The ALJ erred by finding that Transcendence II did not cover payroll because LaMonica refused to allow Transcendence II to use the TransCare NY payroll records and system to pay the employees. ALJD at 13:5-11.

Exception 30: The ALJ erred by concluding that there was no substantial continuity of operations after the takeover and that Transcendence II never began operating. ALJD at 14:28, 31.

Exception 31: The ALJ erred by concluding that Transcendence II never hired a majority of the predecessor's employees. ALJD at 14:28-29; ALJD at 16:16-17.

Exception 32: The ALJ erred by finding that Transcendence II needed the server to operate and LaMonica would not release the server. ALJD at 14:38-46.

Exception 33: The ALJ erred by finding that the bill of sale, agreement to pay and transfer statement dated February 24 was never executed. ALJD at 14:46-47.

Exception 34: The ALJ erred by finding that "While the bill of sale and agreement seems to indicate that the agreement and transfer was executed on February 24, the factual reality was such that the two most significant assets for Transcendence II could not be transfer[red] absent the consent of the bankruptcy trustee and the MTA." ALJD at 15:2-5.

Exception 35: The ALJ erred by finding that the Trustee objected to the sale and transfer of TransCare assets to Transcendence II, including the MTA Contract and the computer server. ALJD at 15:1-2.

Exception 36: The ALJ erred by finding that Stephen never stated that Transcendence II was operating. ALJD at 15:10-14.

Exception 37: The ALJ erred by concluding that the MTA Contract was still held by the Trustee as a TransCare NY asset. ALJD at 15:25-26.

Exception 38: The ALJ erred by concluding that TransCare's (alleged) failure to deliver foreclosed assets rendered the foreclosure agreement null and void. ALJD at 15:28-37.

Exception 39: The ALJ erred by concluding that Transcendence II could not operate a paratransit business unless it was under contract with the MTA. ALJD at 15:39-40.

Exception 40: The ALJ erred by finding that it would make little business sense for Transcendence II to operate without revenue generated from the contract. ALJD at 15:40-42.

Exception 41: The ALJ erred by concluding that the Patriarch employees working on the restructuring plan needed consent from the Trustee to terminate the MTA contract and consent from the MTA for an assignment of the contract or to negotiate a new contract. ALJD at 15:47 - 16:3.

Exception 42: The ALJ erred by finding that “[N]o work was done by Transcendence II. . . . [A]ll the work done on February 24, 25, and 26 was done by TransCare NY.” ALJD at 16:10-14.

Exception 43: The ALJ erred by finding that Fuchs believed that TransCare NY was still operating. ALJD at 17:4-6.

Exception 44: The ALJ erred by finding that “Below the executive level, there has been no testimony or evidence that Patriarch was involved in the hiring, retention, or removal of rank-and-file employees.” ALJD at 21:15-17.

Exception 45: The ALJ erred by finding that Patriarch did not establish the rates of pay for Transcendence II’s employees. ALJD at 21:17-18.

Exception 46: The ALJ erred by finding that Patriarch did not provide the funds from which employees were paid. ALJD at 21:18.

Exception 47: The ALJ erred by finding that Patriarch did not determine the number of employees necessary for paratransit work. ALJD at 21:19-20.

Exception 48: The ALJ erred by concluding that Patriarch was acting on behalf of Tilton, the owner of TransCare, who was trying to save 700 TransCare NY jobs by offering new employment at Transcendence II, and not because Patriarch, PPAS, and/or Transcendence were joint employers with Transcendence II. ALJD at 21:21-24.

Exception 49: The ALJ erred by finding that Patriarch would not have codetermined or imposed any specific conditions on the employees of Transcendence II or retained the right to reject and remove the unit bus drivers that would have been hired by Transcendence II. ALJD at 21:27-29.

Exception 50: The ALJ erred by finding that Patriarch did not handle the labor negotiations for Transcendence and Transcendence II. ALJD at 21:29-30.

Exception 51: The ALJ erred by finding that Patriarch did not impose any terms and conditions on Transcendence II employees. ALJD at 21:26-38.

Exception 52: The ALJ erred by finding that Respondents never imposed, shared or codetermined directly or indirectly any matter over the essential terms and conditions of employment of the employees. ALJD at 22:18-20.

Exception 53: The ALJ erred in the weight he assigned to the common ownership and financial control factor in establishing single-employer status. ALJD at 23:19-29.

Exception 54: The ALJ erred by concluding that the operations of each Respondent are distinct and separate. ALJD at 23:33.

Exception 55: The ALJ erred by concluding that there is no common management among the Respondents. ALJD at 24:3.

Exception 56: The ALJ erred by concluding that there was no centralized control of labor relations among the Respondents. ALJD at 24:20.

Exception 57: The ALJ erred by finding that Respondents did not cover financial obligations of Transcendence and Transcendence II. ALJD at 25:18-23.

Exception 58: The ALJ erred by concluding that Respondents had an arms-length relationship. ALJD at 24:35 – 25:30.

Exception 59: The ALJ erred by finding that Patriarch and PPAS were not directed to write checks to cover the payrolls of Transcendence and Transcendence II employees. ALJD at 25:20-21.

Exception 60: The ALJ erred by concluding that “The bill of sale of TransCare’s assets was an arms-length transaction.” ALJD at 25:25.

Exception 61: The ALJ erred by finding that other lenders, including Wells Fargo, were involved in the bill of sale of TransCare’s assets to ensure that there was proper accounting and fair value for TransCare’s assets. ALJD at 25:25-27.

Exception 62: The ALJ erred by finding that “Tilton was prepared to put up her own personal funds of \$10 million to buy some of TransCare’s assets.” ALJD at 25:27-28.

Exception 63: The ALJ erred by finding that “All loans and financial transactions were well documented and there was nothing suspicious, such as an interest-free loan or nonpayment of a secured interest when an installment was due, to negate anything less than an arm’s-length arrangement.” ALJD at 25:28-30.

Exception 64: The ALJ erred by not giving sufficient weight to Tilton's ownership of Respondents, right to control Respondents, and exercise of those rights in concluding that Respondents were not a single employer. ALJD at 23:11-23; ALJD at 21:4 – 22:20.

Exception 65: The ALJ erred by not affording weight to Tilton's involvement in the hiring and retention of rank-and-file employees, including her decision to hire all of TransCare's bargaining unit employees to work for Transcendence II, in concluding that Respondents were not a single employer. ALJD at 21:15-17.

Exception 66: The ALJ erred by not affording weight to Tilton's involvement in establishing the rates of pay for Transcendence II's employees, including her decision that all terms and conditions of employment would remain the same, in concluding that Respondents were not a single employer. ALJD at 21:17-18.

Exception 67: The ALJ erred by not affording weight to Tilton's involvement in providing and offering to provide funds from which employees were paid or would be paid in concluding that Respondents were not a single employer. ALJD at 21:18.

Exception 68: The ALJ erred by not affording weight to Tilton's involvement in determining the number of employees necessary for paratransit

work, including her decision to retain all of TransCare NY's bargaining unit employees, in concluding that Respondents were not a single employer. ALJD at 21:19-20.

Exception 69: The ALJ erred by not affording weight to Tilton's involvement in determining terms and conditions of employment of the employees of Transcendence II in concluding that Respondents were not a single employer. ALJD at 21:27-29; ALJD at 21:40-42; ALJD at 22:18-20.

Exception 70: The ALJ erred by refusing to admit into evidence additional documents from the TransCare bankruptcy proceeding and related cases in bankruptcy court, including proposed General Counsel Exhibit 31. Tr. 356-57.

Dated: October 30, 2019

Respectfully submitted,

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